

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2007

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.22523 of 2004 & W.P.M.P. No.27251 of 2004

The Madras Presidency Homoeopathic Association
Represented by its Hony. General Secretary
Dr.K.S. Bhaskaran Nair
191 Royapettah High Road
Mylapore
Chennai - 600 004

... Petitioner

vs.

The Registrar
Tamil Nadu Homoeopathy Medical Council
Arignar Anna Govt. Hospital of Indian Medicine Campus
Arumbakkam
Chennai - 600 106

... Respondent

Writ Petition filed under Article 226 of the
Constitution of India praying for a writ of certiorarified
mandamus as stated therein.

For petitioner Mr. M.V.L. Narasimhan
For respondent Mr. T. Mohan

ORDER

This petition has been filed by the Madras Presidency Homoeopathic Association, Chennai (in short "the petitioner association) for issuance of a writ of certiorari calling for the records of the respondent council in its communication no.277/TNHMC/04 dated 21.06.2004 and to quash the same insofar as the petitioner is concerned.

2. The case of the petitioner association, in brief, is as under:

a. It was established in 1937 as a Society registered under the Societies Registration Act for the propagation of the system of Homoeopathic medicine and has been conducting lecture classes on

Homoeopathic system of medicine from 1954. After the Tamil Nadu Homoeopathy System of Medicine and Practitioners of Homoeopathy Act, 1971 (in short "the Act") was passed, only those who are registered under the Act are eligible to practice Homoeopathy and as such, the members of the petitioner association who got themselves registered under the Act are now practising Homoeopathy. After the Act was enacted, the petitioner association is conducting Sunday lecture classes for its members on a regular basis in the form of a three-year course to spread awareness on Homoeopathy and to impart knowledge about the efficacy on the system and its members are not entitled to practise as a medical practitioner on getting the course completion certificate. As a token of appreciation of the activities of the petitioner association, Dr. Durai Aranganar has donated his building at Aminjikarai for the establishment and running of a Homoeopathic hospital wherein a Homoeopathic clinic is run in addition to the one at Mylapore. Many prominent personalities like Justice Patanjali Sastri, Judge, Supreme Court, Dr. N.M. Choudhary, eminent doctor from Bengal, Mr.V.V.Giri, former Indian President, Justice P.Ramakrishnan, Justice N. Krishnaswamy Reddy, Judges of Madras High Court, Justice P.R. Gokulakrishnan, Retd. Chief Justice of Gujarat High Court, and Dr. H.S.N. Royce, Principal of Medical College, Bangalore, have been Presidents of the petitioner association. Further, Dr.C. Sriramulu, and Dr.S.P. Kopikkar, the then General Secretaries of the petitioner association were nominated by the Tamil Nadu Government as the President of the respondent council.

b. Subsequent to the passing of the Act, the petitioner association has restricted its week-end lecture classes to its members, only for the purpose of spreading awareness of the Homoeopathy system of medicine by collecting a nominal sum of Rs.200/- per month to meet conveyance, accommodation and administrative expenses in the process of conduct of such lectures and its members were all informed that they will not be entitled to practise Homoeopathy since they cannot be registered with the respondent council and this fact is also brought out in the application form and prospectus issued at the time of admitting the members. The activities of the petitioner association also include conduct of frequent free medical camps at various places like slums to cater to the poorer sections of the society.

c. The facts being so, the respondent council, namely, Tamil Nadu Homoeopathy Medical Council, has addressed a letter dated 21.06.2004 to the petitioner association alleging quacks in Homoeopathy and directing the petitioner association to stop forthwith conducting such unlawful courses in Homoeopathy and the petitioner association too, stopped the conduct of such courses as directed.

3. The main grounds urged by the petitioner association in this writ petition are that:

a. though the respondent council has cited a communication dated 25.05.2004 from the Central Council of Homoeopathy, New Delhi and the other dated 02.06.2004 from the State Government, they have not been furnished to the petitioner association and thus, it is prevented from defending its case effectively;

b. the allegation in the impugned order that the lecture classes of the petitioner association are violative of Section 27 of the Act, cannot be sustained as the certificate issued by the petitioner association is in no way identical or colourable imitation of the diploma offered by any recognized body under the said Act inasmuch as it is made clear in the prospectus, application form and certificate issued to members that they are not entitled to get registration under the Act to enable them to practise Homoeopathy;

c. Small Industries Service Institute of the Government of India also is conducting various courses in several branches of Law like Human Rights, Cyber Law, International Law, Company Law, etc. which merely enable the participants to acquire knowledge in the respective line and do not enable them to practice in the said line and similar is the case of the petitioner association also;

and in view of the above, the impugned order has to be set aside and the writ petition allowed.

4. In response, the respondent council has filed its counter and its case, as culled out from the counter is as follows:

a. The respondent council is a statutory body established under Section 3 of the Act and is empowered by the said Act to (i) regulate the registration of practitioners who may be permitted

to practise Homoeopathy system of medicine, (ii) establish, with the approval of the Government institutions to teach homoeopathy to aid such institutions, (iii) grant or refuse affiliation to such aided institutions, (iv) hold examinations for persons who have pursued the course of study in authorized institutes, (v) provide, by regulation, courses of study for different examinations, (vi) confer honorary degrees on practitioners of extraordinary merit, etc.

b. The petitioner association has been conducting unlawful courses on a regular basis upon collection of fees without the permission of any of the authorities that are empowered to do so and has also been in the practice of issuing certificates of diploma in Homoeopathy to those who complete its three-year course; that apart, it blatantly advertises that it offers certificate courses in Diploma in Homoeopathy and collects substantial fees for the said courses in violation of the regulatory statutes and when this was brought to the knowledge of the respondent council by the Central Council of Homoeopathy vide letter dated 25.05.2004, it was required to issue the letter under challenge to the petitioner association asking it to stop the week-end lecture classes forthwith, which according to it, has to be upheld and the writ petition to be dismissed.

5. Mr. M.V.L. Narasimhan, learned counsel for the petitioner association has contended that the issuance of the impugned order is beyond the scope of Section 22 of the Act which specifically stipulates that the jurisdiction of the respondent council is limited only to the institutions affiliated to it or approved by it and since the petitioner association does not fall under either of these two categories, the respondent council has blatantly violated the fundamental rights particularly right to form association, foster knowledge and also right to information and freedom of expression.

6. Mr. Narasimhan has further contended that the petitioner association is not in the practice of collecting substantial amount of fees for the conduct of week-end courses as alleged in the impugned order as only a meagre sum of Rs.200/- per month is collected from every member by the petitioner association besides the membership fee of Rs.1,000/-. It is also his strenuous contention that the week-end classes are conducted by the petitioner association only with the avowed object of spreading awareness in Homoeopathy amongst its members and not with the aim of amassing funds by enabling its members to practise Homoeopathy medicine and thereby collecting substantial sum, as claimed by the respondent council.

7. As for the applicability of Section 27 of the Act which says that no other person other than

- a. a university or
- b. an institution established by or affiliated to the Council or
- c. an authority empowered or recognized as competent by the Government to confer, grant or issue any degree, diploma, licence, certificate or any other like award entitling the holder thereof to practise Homoeopathy,

shall confer, grant or issue or hold himself out as entitled to confer, grant or issue any degree, diploma, licence, certificate or any other like award which is identical with or is colourable imitation of any degree, diploma, licence, certificate or award conferred/granted or issued by a University or any of the bodies stated above, the learned counsel for the petitioners has argued that the said Section will not attract the petitioner association as it does not issue or holds itself as entitled to issue such a certificate which is a colourable imitation and that being the case, the respondent council is not justified in directing stoppage of conduct of lecture classes of the petitioner association.

8. In support of his contention that education is a fundamental right without which the Constitution would fail, Mr. Narasimhan has relied on paragraph 166 of the judgment reported in (1993) 1 SCC in the case of Unni Krishnan vs. State of Andhra Pradesh and others and they read as under:

"... Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinabove, we hold, agreeing with the statement in Bandhua Mukti Morcha that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognized not only in this country since thousands of years, but all over the world. In Mohini Jain vs. State of Karnataka (1992) 3 SCC 666, the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this Country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasized than in the above words. . . ."

9. On the same contention, the counsel for the petitioners has placed further reliance on yet another judgment of the Supreme Court reported in (1992) 3 SCC 666 in the case of Mohini Jain (Miss) vs. State of Karnataka & others: (paras 9 and 14)

"The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality, the fundamental rights under Chapter III shall remain beyond the reach of the large majority which is illiterate."

The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. Increasing demand for medical education has led to the opening of large number of medical colleges by private persons, groups and trusts with the permission and recognition of State Governments. The Karnataka State has permitted the opening of several new medical colleges under various private bodies and organizations... .

10. Per contra, Mr. T. Mohan, learned counsel for the respondent council, besides denying the various averments of the petitioner association stated in its affidavit, has contended that the respondent council has issued the order under challenge only upon specific insistence by the Central Council of Homoeopathy to take effective steps against the petitioner association which had come out with an advertisement stating that it is offering a three year diploma and certificate course in Homoeopathy which it is not empowered to.

11. Mr. Mohan has further argued that the respondent council is a statutory body established under Section of the Act and is the regulatory body as far as the Homoeopathy system of medicine in the State is concerned and as such, invoking Section 27 of the Act, the respondent has come out with the issuance of the order under challenge which is very much in accordance with law.

12. The counsel for the respondent council, to add strength to his contention that the practice of private bodies offering diploma courses without the sanction of the authorities concerned should be deprecated, has relied on a judgment of this Court reported in 1992 MLJ 168 in the case of Indian Institute of Human Resources Development represented by its Founder and Honorary Director, P. Govindarajan vs. National Institute of Human Resources Development, represented by its Proprietor S. Muthu and the relevant portions of the said judgment are extracted as under:

"27. . . .The Institute had been using high sounding words to attract the students to join the so called course of study in their Institute and receive the diploma. The Commission took the view that 'diploma' was a document conferring honour or privilege and that such honours could be conferred by a competent authority which was the creation of law. It accordingly pronounced that the word 'diploma' as used by the said institute in the prospectus was objectionable and was an unfair trade practice."

28. What follows from our discussion above is that both the plaintiff/respondent and the defendant/appellant have indulged in unfair trade practice. They have both made false representations in their respective prospectus. . . . Their activities have the effect of contemplating a fraud and if they have awarded/diplomas they have perpetrated fraud upon the students who joined the Institute in the hope of obtaining the diploma of some use

29. . . .This is a fit case in our opinion that this Court should take judicial notice of the activities of the plaintiff/respondent as well as the activities of the defendant/appellant and restrain them from proceeding with their so-called P.G. diploma courses and to direct them to desist from awarding any diplomas, stating clearly and publicly that they do not have any authority to issue any such diploma and to apologise publicly that they committed a mistake in issuing prospectus for awarding P.G. diplomas.

30. . . . It may not be a false statement to say that the studies prescribed by them would benefit the students. But it is surely incorrect to suggest that diplomas issued by them would in any manner benefit the students in securing jobs or benefiting them in their service. . . .

33. We, for the above said reason, have no hesitation in restraining both the plaintiff and the defendant from

i issuing diploma in Human Resources Development:

ii admitting the students on the basis of their respective representations in the syllabus and continuing their activities in the form and manner in which they have conducted their activities until now until their curricula is approved by the council under the All Indian Council for Technical Education Act, 1987 and so long it is offending the prohibition under the M.R.T.P. Act and Section 23 of the Indian Contract Act."

13. I have given careful thought to the rival contentions of the learned counsel on either side and also the judgments relied on by them in support of their contentions.

14. In the process of deciding the case on hand, it would be relevant to refer to Section 12A and 12B of the Homoeopathy Central Council (Amendment) Act, 2002 and the same read as under:

12A. (1) Notwithstanding anything contained in this Act or any other law for the time being in force:

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a no person shall establish a Homoeopathic Medical College; or

b no Homoeopathic Medical College shall

i open a new or higher course of study or training (including post-graduate course of study or training) which would enable students of each course or training to qualify himself for the award of any recognized medical qualification; or

ii increase its admission capacity in any course of study or training (including the post-graduate course of study or training)

except with the previous permission of the Central Government obtained in accordance with the provisions of this scheme

12B (1) Where any medical institution is established without the previous permission of the Central Government in accordance with the provisions of

Section 12A, medical qualification granted to any student of such medical institution shall not be deemed to be recognized medical qualification for the purposes of this Act.

(2) Where any medical institution opens a new or higher course of study or training (including a post-graduate course of study or training) without the previous permission of the Central Government in accordance with the provisions of Section 12A, medical qualification granted to any student of such institution on the basis of such study or training shall not be deemed to be recognized medical qualification for the purposes of this Act.

15. A bare reading of the above provision makes it clear that prior permission from the Central Government is a sine qua non either to start a Homoeopathic College or to start a fresh Homoeopathic course or to award any medical qualification. In the case on hand, admittedly, no material has been placed before this Court by the petitioner association to convince that it has got the due sanction from the Central Government as mandated by the Homoeopathy Central Council (Amendment) Act, 2002. Of course, it is the admitted case of the petitioner association that it has submitted memorandum to the Central and State Health Ministers and to the Government for recognition of its course for awarding 'B' class registration for its members and the same is under consideration. Thought it may be true that prior to 1972, there was no Act to monitor the practice of Homoeopathy in the country, after the coming into being of both State and Central Acts in 1972, the petitioner association cannot remain in isolation and naturally falls under the ambit and purview of the said Acts.

16. Secondly, I feel it would be useful to refer to the Prospectus of the petitioner association and the same is extracted as under:

"PROSPECTUS

The Madras Presidency Homoeopathic Association, a premier institution of its kind in Tamil Nadu, was established in 1937 and has all along been doing meritorious work in the cause of Homoeopathy. The Association strongly believes in 'Homoeopathy for All' and strives for 'Health for All'. Since inception, the Association has been running two dispensaries giving treatment to the out-patients at minimum reasonable charges.

THE COURSE AND ITS AIMS

1. The Homoeopathic System of Medicine has been recognized in almost all States in India. There are however, only

a few institutions imparting education through direct instruction. One such institution in this State is ours, which started Direct Institutional Training in 1955, to fill the hiatus to some extent.

2. The lecture classes impart instruction in Human Anatomy, Human Physiology, Pathology of Diseases, Medicine, Midwifery, Gynaecology, Minor surgery, public health and hygiene and Medical Jurisprudence in addition to Homoeopathic Philosophy, Therapeutics, Organon, Materia Medica and the Schuesslerian system of Bio-chemic remedies.
3. The lecture classes extend over three years. Classes being held for 4 hours on Sundays between 1.00 p.m. and 5.00 p.m.
4. Instruction is imparted by experts in the respective fields of study. The services of a number of allopathic professors and practitioners of considerable standing and eminence have always been available for giving lectures on allied subjects.
5. Practical training is given by permitting students of 2nd and 3rd years classes to attend the dispensary run by the Association.
6. A reasonably well stocked library is available for reference by students.

ADMISSION AND FEES

7. Candidates for admission are required to have passed Plus II or its equivalent.
8. Admissions are made in April each year to the First year lecture class. Direct admission to higher classes is not permitted.
9. Candidates admitted to the course are required to become student member of the Association by paying the prescribed admission fee and membership subscription.
10. The Association does not charge any fees, but students are required to make contribution towards expenses of running it. The scale at present is Rs.200/- per month. Contributions are payable in advance.

CLASSES, ATTENDANCE, EXAMINATIONS AND CERTIFICATES

11. Classes commence each year on the Second Sunday of April and end on the last Sunday of March. Holidays

will be sanctioned at the discretion of the authorities but not more than three occasions in the year.

12.75% attendance each year is compulsory.

13. Leave when necessary should be applied for and obtained in advance.

14. It shall be within the powers of the Association to enforce discipline and impose punishments, as necessary.

15. Written examinations will be held by the Association's court of examiners at the end of each academic year in April.

16. A minimum of 40% marks in each paper is required for a pass.

17. The Association's Certificate is granted to each student passing the Final Examination after completing the entire lecture classes of 3 years.

18. Students have to reappear in the subjects securing below minimum marks.

19. The Certificate issued is not registerable with the council for the purpose of practice for the present.

. . .
. . .
. . ."

17. A glance of the prospectus of the petitioner association would clearly indicate that it is more or less a replica of the prospectus of a body which is recognized under Section 27 of the Act to offer such a course. Of course, the word 'diploma' has not been used by the petitioner association anywhere in the prospectus. But, when clause no.19 says that the certificate issued is not registerable with the council for the purpose of practice for the present, there is every possibility that the words "for the present" may give a feeling to the members intending to join the petitioner association that the certificate may be made as a registerable one with the council, sooner or later. In other words, it can be said that the petitioner association has used the wordings in such a way that a person who gives a reading of the prospectus, will naturally have a fond hope that he may practise Homoeopathy by undergoing the certificate course offered by the petitioner association. Even assuming that it is the contention of the petitioner association that it has never used the word 'diploma' in its prospectus, the newspaper advertisement released by it clearly says that the

petitioner association is offering a 3 year 'diploma' course in Homoeopathy. This is in clear violation of Section 12A and 12B of the Homoeopathy Central Council (Amendment) Act, 2002 discussed earlier. If at all the petitioner association is so keen and particular in promoting awareness in the field of Homoeopathy medicine, it can very well do so after getting due sanction from the Central Government in this regard which is not the case here as discussed already. At this juncture, I can rather go to the extent of saying that the petitioner association, by offering diploma certificates, without the due sanction of the Central Government, is running a parallel authority of its own, which a recognized body alone is empowered to do as per Section 27 of the Act.

18. Though it is contended by the counsel for the petitioner association that education is a fundamental right and denial of the same would defeat the very aims and objectives of the Constitution for which it was framed, it is pertinent to state in this context that as held in Unnikrishnan's case (supra), Article 21 confers the right to education upto 14 years of age which is, in other words, called 'primary education'. But, in the instant case, inarguably, the 3-year diploma course offered by the petitioner association does not fall under the purview of 'primary education' and that being the case, the judgments relied on by the counsel for the petitioner association can only go futile. On the other hand, the judgment reported in 1992 II MLJ 168 (supra) relied on by the counsel for the respondent council deserves consideration for the present case. As held therein, the activities of the petitioner association do have the effect of contemplating a fraud. Today, the petitioner association is one which offers diploma course in homoeopathy without the due sanction from the Central Government. If this is allowed to continue, no wonder, tomorrow, it may lead to mushroom growth of homoeopathic institutions offering diploma courses, without due sanction from the Central Government, thereby raising false hopes and aspirations in the minds of public desirous of undergoing diploma in homoeopathy enabling them to practise in homoeopathy medicine.

19. Taking into consideration, the case of the both the parties, relevant provisions of the State and Central Acts, the ruling of this Court relied on by the counsel for the respondent discussed above and last but not the least, the public interest, I hold that the order of the respondent which is under challenge, is in no way infirmed and accordingly, the writ petition does not merit any favourable consideration and is liable to be dismissed.

20. However, it appears that the petitioner association has been headed by many eminent personalities right from its inception in 1937 and has conducted lecture classes till the State and Central Acts came into being simultaneously in 1972 and has also been rendering yeoman service to public. In that view of the matter, the petitioner association is given liberty to

address a fresh representation to the authorities concerned, detailing their grievances in the conduct of lecture classes as an awareness programme and the same may be considered, as expeditiously as possible, within the parameters of the provisions of the Central and State Acts and while doing so, the petitioner association's contribution to the society before the enactment of the Central and State Acts, may be given due consideration.

With the above observation, the writ petition is dismissed without any order as to costs. Consequently, connected W.P.M.P. is closed.
Cad

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar
Tamil Nadu Homoeopathy Medical Council
Arignar Anna Govt. Hospital of Indian Medicine Campus
Arumbakkam, Chennai - 600 106

+ one cc to Mr. T. Mohan, Advocate sr no. 9712
+ one cc to Mr. M.V.L. Narasimhan, Advocate sr no. 9603

skr(co)
nm(26.02.07)

W.P. No.22523 of 2004

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